

# **ORDINANCE 1602**

## **AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, DECLARING AN EMERGENCY AND ADOPTING A SIX-MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR PERMITS OR APPROVALS FOR THE PLACEMENT OF WIRELESS COMMUNICATION FACILITIES WITHIN THE CITY; PROVIDING FOR SEVERABILITY; AND PROVIDING THAT THE MORATORIUM WILL TAKE EFFECT IMMEDIATELY UPON PASSAGE**

**WHEREAS**, prior to 2010, Chapter 18.10, Zoning Districts, of the North Bend Municipal Code (NBMC) allowed wireless communications facilities as a conditional use in the majority of zoning districts in the City of North Bend (“City”); and

**WHEREAS**, NBMC 18.24.070, which was last updated in 2010, provides specific but limited criteria for the approval of a conditional use permit for wireless communication facilities; and

**WHEREAS**, on or about September 21, 2010, the City Council adopted Ordinance No. 1404, amending Chapter 18.10 NBMC to allow wireless communication facilities as a permitted, rather than conditional, use in the majority of zoning districts in the City, but failed to relocate the development regulations for such a use to NBMC 18.10.050, Table of Performance Standards, and failed to repeal the conditional use criteria for wireless communication facilities in NBMC 18.24.070; and

**WHEREAS**, in 2012 Congress passed the “Middle Class Tax Relief and Job Creation Act of 2012” (the “Spectrum Act”) (PL-112-96; codified at 47 U.S.C. § 1455(a)), which, in part, amended the Telecommunications Act of 1996; and

**WHEREAS**, the City Council has determined that the NBMC currently lacks adequate provisions to regulate wireless communication facilities within the City in compliance with current federal laws; and

**WHEREAS**, the City Council finds that the vesting of permit applications for construction of wireless communication facilities under the existing NBMC would be detrimental to public health, safety and welfare;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Findings of Fact:** The City Council adopts as findings of fact the recitals set forth above, which are incorporated herein by reference.

**Section 2. Moratorium Imposed:** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a moratorium is hereby imposed in the City of North Bend upon the acceptance of applications for land use permits, development permits, building permits, conditional use permits, special use permits, variances, rezones, and all other types of permits or approvals for wireless communication facilities within the City; provided, that no part of this Ordinance shall be construed in a manner that conflicts with the applicable provisions of Section 6409 of the Spectrum Act.

**Section 3. Referral to Mayor:** The Mayor is requested to direct City Staff to analyze the City's development regulations related to wireless communication facilities and all applicable state and federal law, and to prepare recommendations for consideration by members of the public, members of the development community, the Planning Commission, and the City Council.

**Section 4. Public Hearing:** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council will hold a public hearing and may adopt additional findings of fact regarding this moratorium within 60 days of the adoption of this Ordinance.

**Section 5. Duration/Renewal:** The moratorium imposed by this Ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the City Council.

**Section 6. Severability:** If any one or more section, subsection, or sentence of this Ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

**Section 7. Effective Date:** This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,  
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 1<sup>ST</sup> DAY OF  
NOVEMBER, 2016.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Kenneth G. Hearing, Mayor**

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**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Published: November 9, 2016  
Effective: November 1, 2016

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**Susie Oppedal, City Clerk**